

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O.NO. 1132 OF 1991.

DATE OF DECISION: July 09, 2006.

Hukam Singh son of Kalu Ram, resident of Village Talu, District Bhiwani.

Versus

Janak Steel Tubes Ltd., Delhi Road, Hisar, through its Managing Director,
Registered owner of Truck No. 1211 and others.

Present: Shri H.S.Gill, Senior Advocate, with
Shri Vivek Goyal, Advocate, for the appellant.

Shri P.K.Ranga, Advocate, for respondent No.3.

R.S.MADAN, J.

1. This appeal is directed against the order dated 14.06.1991 passed by the Motor Accident Claims Tribunal, Hisar, (for short to be referred to as "MACT, Hisar)" vide which the claim of the present appellant with respect to the damage caused to the Tractor bearing No.HYL-2275, was dismissed.

2. In brief, the facts of the case are that on 26.11.1990, Krishan Kumar had come to Hisar along with Suresh Kumar to sell his cotton and after selling the same they were returning in Tractor No. HYL-2275 being driven by Krishan Kumar, deceased, whereas Suresh Kumar was sitting on the mudguard of the tractor. At about 10 P.M. when they reached near Satrod Khurd near bridge of Canal, Krishan Kumar stopped the tractor-trolley on the extreme left side of the road to urinate. After urination Krishan Kumar was checking the articles lying in the trolley. In the meanwhile truck No.HYT-1211 which was being driven by Karam Vir, respondent No.2, came from the opposite direction in a rash and negligent manner and hit the right side of the tractor as a result of

which Suresh Kumar fell down from the tractor. The tractor was broken into pieces. Krishan Kumar received injuries on the head and died on the spot. Hukam Singh claimant who was the owner of the tractor trolley filed the claim petition for the grant of compensation to the tune of Rs.50,000/- on account of damage caused to the tractor trolley. It was also pleaded that the claimant suffered loss of Rs.10,000/- by not plying the tractor for two months because he remained idle during this period.

3. The claim petitions were contested by the respondents by filing separate written statements.

4. From the pleadings of the parties, the following issues were framed by the learned MACT, Hisar:-

1. Whether the accident took place due to rash and negligent driving of Truck No. HRT-1211 by Karam Vir Driver? OPP.
2. If issue No.1 is proved, to what amount of compensation are the claimants entitled to and from which of the respondents? OPP.
3. Whether the petition is not maintainable in view of the preliminary objections raised by the respondents? OPR.
4. Relief.

5. Issue No.1 was decided in favour of the claimants. While disposing of issue No.2, the claim petition filed by Hukam Singh was dismissed on the ground that Hukam Singh claimant has failed to prove that he was the owner of the tractor in question on 26.11.1990, the date on which the alleged accident had taken place. The registration of the vehicle was transferred to his name only after the accident. Since, the vehicle was not transferred in the name of Hukam Singh claimant, on the date of accident, his claim in respect of damage caused to the tractor was rejected.

6. Challenge here in this appeal is the order of the Tribunal vide which the claim of the appellant was dismissed.

7. I have heard the learned counsel for the parties and have perused the record carefully.

8. It is pertinent to mention here that at the time of filing of the appeal, an application under Order 41 Rule 27 of the Code of Civil Civil Procedure, was also moved for permission to place on the record the copy of the registration certificate of the tractor in question. At the time of admission of the appeal, it was ordered that the application shall also be heard and disposed of at the time of final hearing of the appeal.

9. On behalf of the appellant, it is contended that in order to prove the damage caused to the truck, the claimant-appellant has examined Satbir Singh, Tractor Mechanic, (PW5), who has categorically stated that he had surveyed the tractor bearing No.HYL-2275 at the asking of Hukam Singh to assess the damage caused to the tractor and he prepared the estimate of damage, fully detailed in Ex.P-10 and Ex.P12 for a sum of Rs.33321-50 paise and labour charges for Rs.2710 and issued the estimate Ex.P-10 to Ex.P12. He stated that the estimates were assessed correctly as the vehicle was completely damaged. In the cross examination, the testimony of this witness could not be shattered.

10. The testimony of PW-06 Inder Parkash. is the partner of M/S Hindustan Workshop at Hansi, inspected the trolley of tractor No.HYL-2275 on 18.12.1990 and had issued the estimate cost of repair of the trolley. Besides this, there is the statement of the claimant Hukam Singh as PW-4 who has given a detailed version for the damage caused to the tractor. He admitted that due to paucity of funds he was unable to carry out the repairs of his tractor. Besides this the claimant has also placed on the record the photographs Ex.P4 to P-7 regarding damage caused to the accident and also showing the scene of

accident. In rebuttal no evidence was led by the Insurance-Company, except for giving suggestions to this witness that the tractor was not damaged in the accident as claimed by the petitioner.

11. It has been contended by Shri H.S.Gill, Senior Advocate, on behalf of the appellant, that the sale of the vehicle is governed by the provisions of Sale of Goods act and stated that transfer of the vehicle is complete upon payment of consideration and the delivery of the vehicle, irrespective of the fact whether it has been registered or not. Reference was made to Balwant Singh Versus Jhanubai and others 1980 ACJ 126, wherein the High Court of Madhya Pradesh High Court at Indore has dealt with this question in paras No. 9, 10, 11 and 12 of the judgment. In para No.11 of the judgment, it has been observed as under:-

“It has further been held by this decision that registration certificate is a very important piece of evidence to show the ownership of the vehicle for certain purposes. However, failure to do so, cannot be deemed to militate against the validity and legality of the passing of the title in the vehicle so transferred or to expose the innocent seller who may have done his all to complete the transfer to legal liabilities for acts and omissions in respect of the vehicle subsequent to the transfer. Moreover, the certificate of registration is not a document of title, it is issued to the owner of the vehicle, that is the person by whom the vehicle is kept and used and although provision made for changes of ownership to be recorded in the book the name appearing in it may not be that of the legal owner of the vehicle, the registration book is evidence of title and its absence at the time of sale should put a purchaser on inquiry”.

Reference was also made to the Full Bench judgment of Andhra Pradesh High Court reported as Madineni Knodaiah and others Versus Yaseem Fatima and others - 1986 ACJ 1, where in paragraph No.35, it was observed as under:-

“On the first question we refer Sections 22 and 31 of the Motor Vehicles Act, 4 of 1939 (hereinafter called “the Act”). No doubt, those provisions enjoin both on the transferor and transferee to report the factum of transfer of the

vehicle to the registering authority and the owner is required to register the vehicle. We are not persuaded to hold on a careful reading of the said provision that the transfer is incomplete till the registration is effected in favour of the purchaser. The transfer of vehicle is governed by the provisions of Sale of Goods Act. In the absence of any agreement to the contrary payment of price, and delivery of vehicle make the sale complete, and the title passes to the purchaser. The obligation to register the vehicle is for the purposes of controlling the regulating the movement of vehicles by the authorities under the Act and they do not stand in the way of passing title to the purchaser. This is the view taken by the Supreme Court in Panna Lal Versus Chand Mal, 1980 ACJ 233 (SC) and hence it is unnecessary to go into further debate on this question and accordingly we reject this contention”.

12. In view of the observation made by the Full Bench of the Andhra Pradesh High Court as well as by the Hon'ble Apex Court in Panna Lal's case (supra), I am of the view that the registration of the vehicle in the name of Hukam Singh for claiming the compensation with respect to the damage caused to the vehicle is not a pre-requisite condition.

13. The learned counsel for the Insurance Company could not produce any contra authorities to the observations made by the Apex Court in Panna Lal's case as well as Full Bench decision of the Andhara Pradesh High Court.

14. In the light of the above discussion, the order of the MACT, Hisar is set aside and the claimant-appellant is held to be owner of the damaged vehicle, Since the tractor in question has not been got repaired and only an estimate was got prepared from not an authorized dealer but from a mechanic, is not sufficient to prove the actual damage caused to the tractor in question. However, taking into account the photographs placed on the record as Ex.P4 to Ex.P7 pertaining to the place of accident in which the damage is shown to have been caused to the tractor, this court can assess the extent of damage only from the oral evidence. The tractor in question was of 1984 Model and the accident had taken place on 26.11.1990 and it was 2nd hand tractor purchased by Hukam

Singh claimant. Therefore, he used the same for 7 years. The value of the vehicle during the period of 7 years have depreciated. A consolidated sum of Rs.25,000/- is awarded as compensation which is just and fair to meet the ends of justice. The respondent No.3 Insurance Company along with respondents No.1 and 2 are jointly and severally held responsible to pay the compensation amount to the claimant within a period of three months from the date of receipt of the copy of this order, failing which the claimant would be entitled to receive interest at the rate of 6% per annum from the date of award passed by this Court till the payment is made.

15. Accordingly, the Civil Misc. application and the appeal is accepted with costs of the appeal. Counsel fee is assessed at Rs.11000/-.

JULY 09, 2006.
MALIK

(R.S.MADAN)
JUDGE